

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**  
45 Fremont Street  
San Francisco, CA 94105

**RH03029826**

**June 2, 2006**

**Title 10  
Proposed Revisions to Sections 2632.5, 2632.8 and 2632.11  
Optional Automobile Insurance Rating Factors**

Summary and Response to Oral Comments Presented During February 24, 2006  
Rulemaking Hearing

**Responses to Common Comments:**

**1.1: Common Comments:**

- Rates should be cost-based / substantially related to the risk of loss
- A driver's location (zip code) should be a critical factor in calculating insurance rates
- Drivers in rural regions of the state should not be forced to subsidize the rates for drivers in urban regions of the state.
- The proposed regulations will result in arbitrary rates because of the act of pumping and tempering, the resulting cross-subsidies, etc.

**Response:**

The Commissioner's regulations continue to permit a driver's location to be an important factor in setting insurance rates. While the proposed regulations preserve the importance of location in setting insurance rates, however, Proposition 103 provides that the factors which determine a driver's rates should be weighted in a specific order of importance. The proposed regulations will implement the weight ordering requirement of Proposition 103, which is codified in Insurance Code section 1861.02(a). The ballot pamphlet to Proposition 103 promised, in part, that "103 forces insurance companies to base your rates on your driving record first, rather than on where you live. That means good drivers throughout the state will pay less than they do now, while bad drivers will pay more." The ballot pamphlet also establishes that "In general, the measure requires that rates and premiums for automobile insurance be determined on the basis of the insured person's driving record, miles driven and number of years of driving experience." Finally, in the clearest possible terms, section 1 of Proposition 103 declares under the heading "Findings and Declaration" that "automobile insurance rates shall be determined primarily by a driver's safety record and mileage driven." To the extent that the cost of insurance may increase for some low income drivers and may affect businesses in rural or urban parts of the state, the increase will be determined primarily by the driver's safety record, mileage driven and years of driving experience, as Proposition 103 intended.

While some commentators believe that territory is the most important characteristic for determining the likelihood of an accident, there are other equally important, if not more important considerations which insurers often neglect under the existing regulations. Driving safety record, for example, is a very strong predictor of the risk of loss for an accident. Similarly, annual mileage driven bears a strong correlation to the risk of loss for an accident. The Department commonly observes instances where insurers do not collect meaningful data regarding the correlation between some of the mandatory factors and the risk of loss. One rating factor where insurer data is lacking is the mandatory factor of annual mileage driven. By way of example, the Commissioner has observed that one insurer arbitrarily places insurers into one of merely two categories: drivers that drive less than 7,500 miles per year and drivers who drive more than 7,500 drivers per year. Other examples show similar neglect for data collection regarding the mandatory factors. The existing regulations do not encourage insurers to develop better data collection for the mandatory rating factors, because they allow insurers to fall back on the crutch of territory for auto rating. The proposed regulations will stimulate insurers to conduct better data collection for mileage and driving safety record. This, in turn, will enhance the relationship to the risk of loss between those rating factors and the rates developed under the proposed regulations.

This comment contends that unlike the existing regulations, the proposed regulations will not be cost based and/or substantially related to the risk of loss.

The Court in *Spanish Speaking Citizens' Foundation v. Low* concluded that the language in Insurance Code section 1861.02(a)(4) which requires optional factors to be "substantially related to the risk of loss" also requires that the mandatory factors, and their order of importance must be substantially related to the risk of loss. The Commissioner notes, however, that Insurance Code section 1861.02(a)(4) expressly makes reference to the optional factors alone. Indeed, the Commissioner believes that Proposition 103 sought to bring fairness to automobile insurance rates, in part, by requiring the mandatory factors of driving safety record, annual miles driven and years of driving experience to assume greater weight than the optional factors irrespective of the mandatory factors' relationship to the risk of loss. While the Commissioner disagrees with the Court's interpretation of Insurance Code section 1861.02(a)(4) and the meaning of "substantially related to the risk of loss", the Commissioner recognizes that the *Spanish Speaking* decision represents the current state of the law, and his response takes into account the Court's interpretation in *Spanish Speaking*.

Notwithstanding the Commissioner's interpretation of Insurance Code section 1861.02(a)(4), the *Spanish Speaking* Court determined that for purposes of the weight ordering mandate, "interpretations that preserve a substantial relationship between premiums and the risk of loss ... are [] to be favored over those that would produce arbitrary rates." (*Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1227.) The commentator contends that the existing regulations are substantially related to the risk of loss, but that the proposed regulations are not and therefore are invalid. The fundamental assumption here is that the present rate regulations ensure cost-based rating. This assumption is demonstrably incorrect.

First, Proposition 103 as well as other laws reflect the voters' and Legislature's intent that public policy objectives must often prevail over considerations of cost-based pricing. For example, many insurers contend that a policyholder's lack of a history of prior insurance bears a strong correlation to the risk of an automobile accident. Despite insurers' preference for using the absence of prior insurance as a rating factor, Insurance Code section 1861.02(c) prohibits its use. (See, e.g., *Foundation for Taxpayer and Consumer Rights, et al. v. Garamendi* (2005) 132 Cal. App. 4th 1354.) Other examples of laws which require public policy to take precedence over an argument of cost-based pricing abound. (See, e.g. Ins. Code section 11628 & 679.71 [sex, race, color, religion, national origin, or ancestry cannot by itself constitute a risk for which a higher rate may be charged].) Directly at issue, Insurance Code section 1861.02 requires that automobile rates be determined by applying "in decreasing order of importance" the mandatory factors of driving safety record, annual mileage driven and years of driving experience, followed by any optional factors adopted by the Commissioner. Thus, concerns about cost-based pricing and the relationship to risk of loss often must yield to greater concerns of public policy, as reflected in the weight ordering requirements mandated by section 1861.02(a).

Moreover, the Department has observed numerous examples of rates which are not cost-based under the existing regulations, both within the course of this rulemaking proceeding as well as during its review of rate filings submitted to the Department. The Department's Rate Filing Branch commonly receives rate filings from insurers under the current regulatory system in which the insurers select rate assignments that do not reflect the cost of providing the insurance. For example, although an insurer's loss experience might require an indicated rate relativity for a particular zip code for a cost-based rate, insurers commonly select different rate relativities which markedly deviate from the indicated rate relativity.

While the existing regulations do not result in rates that are purely cost-based, the Court in *Spanish Speaking Citizens* concluded that regulations which "preserve a substantial relationship between premiums and the risk of loss ... [are] to be favored over those that would produce arbitrary rates." (*Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1227.) The proposed regulations, like the existing regulations, do not reflect rates which are in lockstep with a given insurer's loss experience. This situation exists not only because Proposition 103 dictates that some public policy objectives must often override the relationship to the risk of loss, but also because insurers often prefer to select rates which are different from the insurer's loss experience. Nevertheless, the proposed regulations, like the existing regulations, do preserve a substantial relationship between premiums and the risk of loss, and therefore cannot be considered arbitrary or contrary to Insurance Code sections 1861.02(a) and 1861.05.

Similarly, some commentators contend that rating factors which are enhanced or diminished (i.e. – "pumped" or "tempered") to bring the factors into the appropriate weight order are not cost-based and therefore not substantially related to the risk of loss. Under the existing regulations, however, the Department has observed instances of rate

filings in which insurers "pump" the mandatory factor of years driving experience, so that they can increase the influence of zip code on an insured's rate. Indeed, State Farm's comments regarding this rulemaking proceeding recognize that the existing regulations could require pumping or tempering in some cases. Just as the Department recognizes that public policy objectives may take precedence over cost-based rating, the Department recognizes that rates can still be substantially related to the risk of loss despite the fact that some rating factors are pumped or tempered as necessary to bring the rating factors into the correct weight order required by Insurance Code section 1861.02.

Because the proposed regulations ensure that zip code (territory) may be as high as the fourth-most important factor in calculating an insured's premium, rates will still be substantially related to the loss costs associated with a particular region of the state. The Commissioner's proposed regulations achieve the most appropriate balance among the objectives of Proposition 103. Unlike the existing regulations, the proposed regulations ensure that rates will be determined primarily by driving safety record and mileage driven, while still permitting other optional rating factors with a substantial relationship to the risk of loss to have a significant influence on premiums.

#### **1.2: Common Comments:**

- The existing regulations produce lower premiums for more good drivers than other alternatives.
- The proposed regulations will raise rates for good drivers in rural regions of the state.
- The proposed regulations will raise rates for low income drivers in rural regions of the state.

#### **Response:**

While the Court of Appeal in *Spanish Speaking Citizens v. Low* concluded that the current regulations are lawful, the Court also acknowledged that a method identical to the Commissioner's proposed regulations may also represent a permissible interpretation of Proposition 103. To the extent that the commentator suggests that the current regulatory system produces lower premiums for more good drivers, the Commissioner disagrees, as he has observed substantial evidence to the contrary. Indeed, because the proposed regulations ensure that how you drive will be more important than where you live, it is axiomatic that more good drivers will experience rate decreases under the proposed regulations than under the current regulatory system.

#### **1.3 Common Comments:**

- The proposed regulations should be fair for all regions of the state and not just urban regions of the state.
- The Commissioner's proposed regulations ignore the impact upon rural and suburban regions of the state.

#### **Response:**

The Commissioner has considered the impact upon both rural and urban drivers in the state. After receiving a petition for rulemaking in May of 2003, the Commissioner personally attended seven informational meetings in regions of the state ranging from Fresno and Chico to Los Angeles and Oakland to discuss the potential impact of the proposed regulations upon rates for urban and rural regions of the state. The Commissioner observed numerous instances – in rural as well as urban locations – where drivers with identical characteristics would pay unjustifiably different premiums simply because they live in the "wrong" zip code.

For example, the Commissioner has observed substantial variations in premium not only for consumers living within just a few miles of each other, but even for neighbors who live in adjoining zip codes. In fact, the differentials in territory relativities between adjacent zip code pairs for some companies do not closely follow the patterns of the industrywide pure premium data. In looking for examples of arbitrary rates and premiums, one need look no further than the premiums established under the existing regulations. Examples such as these demonstrate that the existing regulations are neither purely cost-based nor consistent with Proposition 103's distaste for zip code rating. The Commissioner's proposed regulations will prevent similar disparity between zip codes in the future, by requiring insurers to give more consideration to how you drive rather than where you live. Not only does this approach make sense, it is the approach that the Proposition 103 ballot pamphlet promised to the voters.

#### **1.4 Common Comments:**

- According to studies performed by Robert Downer and Mercer Actuarial Consulting, Inc., the proposed regulations will result in an XX% increase for XX drivers. Rates will increase for 52 out of 58 counties.

#### **Response:**

At the outset, it is important to point out that any projection of premium that a particular consumer or even a particular region of the state may pay due to the proposed regulations is a matter of substantial speculation. The Commissioner's proposed regulations provide a significant degree of discretion to insurers to decide upon the most prudent manner for implementing the proposed regulations. This discretion exists, in part, because the proposed regulations permit insurers to use any combination of pumping or tempering of rating factors necessary to achieve the order of importance required by section 1861.02(a). Because different insurers will use different rating factors and different methods for achieving compliance with the proposed regulations, it would be virtually impossible to perform a study which would show the precise effect that the proposed regulations will have upon premiums for Californians statewide. Generally speaking, the Commissioner's proposed regulations grant an insurer broad discretion to implement the proposed regulations, so long as a given insurer's rates assign the greatest weight to 1) driving safety record, followed by 2) annual miles driven, followed by 3) years of driving experience, followed by 4) any optional rating factors, weighted individually. While some studies have projected an average rate change for a particular region of the state, the impact of such projection upon a particular consumer will vary significantly due to the unique characteristics of each consumer. Additionally, to date, no study has explored all

of the possible methods by which any given insurer may choose to comply with the proposed regulations. For each of these reasons and others, any comment which suggests that premiums will raise or lower for a particular region of the state by an average of X% is purely speculative and fails to ignore the unique nature of each driver's characteristics as well as the unique manner in which each insurer will choose to comply with the regulations.

This comment includes a figure that suggests a particular County's drivers will receive rate increases of a particular size due to the Commissioner's regulations. To the extent that this comment is referring to the Mercer Actuarial Consulting, Inc. study, the figure appears to have been derived from "Instruction set 3" which was designed to replicate the results of a study performed by Robert Downer. As explained below, the Downer study does not represent an accurate portrayal of the impact of the proposed regulations on Californians' auto rates. Instruction sets 1 and 2, by comparison, showed substantially different and more favorable premium changes for good drivers in all regions of the state.

To the extent that this figure comes from a study produced by Robert Downer, it is important to note that the Downer study produced substantially flawed results which do not represent a reasonable projection of the way in which insurers will comply with the proposed regulations. The Downer study chose to diminish the effect of (i.e. – "temper") any optional factor that was greater than the factor of years of driving experience. At the same time, the Downer study did not permit the possibility of increasing the effect of (i.e. – "pumping") other factors, or a combination of diminishing some factors and increasing others. The proposed regulations, like the existing regulations, permit any insurer to pump or temper any rating factor as necessary in order to achieve compliance. This procedure was not implemented by Mr. Downer's study and directly resulted in the substantial premium shifting projected by Mr. Downer. The Downer study, in short, does not accurately reflect the manner in which insurers will implement the proposed regulations. Because the findings in the Downer study do not accurately reflect the manner in which insurers may implement the proposed regulations, they are irrelevant and consequently have been rejected by the Commissioner.

Mr. Downer's comments regarding the proposed regulations include a new study which he apparently performed in February of 2006. For the reasons described above, this study, like the Mercer data and Mr. Downer's previous study, are constrained by the same limitations and to a reasonable degree of certainty will not reflect the methods of pumping and tempering that individual insurers will use to comply with the proposed regulations.

### **1.5 Common Comments:**

- **Seniors living in rural regions of the state should not be penalized by the proposed regulations.**

### **Response:**

Proposition 103 provides that the number of years of driving experience must be the third most important rating factor, in terms of the weight given to each rating factor. Because

different insurers use differing characteristics to rate drivers according to their age and driving experience, whether a given consumer's age will result in a higher or lower auto insurance rate under the proposed regulations will largely depend upon which insurance company the consumer selects for coverage. Consumers who compare prices before purchasing automobile insurance may find that they will qualify for a lower insurance rate.

#### **1.6 Common Comments:**

- **The Downer Study and Instruction Set #3 from the Mercer Study suggest rates in my county will increase by X%.**

#### **Response:**

As with many of the figures cited in similar comments submitted to the Department, the figures cited in this comment do not bear a reasonable relationship to the likely rate impact of the proposed regulations. The percentage increase in rates described by this commenter appears to be based upon the results of the Downer study and the related results of Instruction set 3 from the Mercer Study. As explained in Response 1.4 above, the Downer study produced substantially flawed results, because Mr. Downer's analysis simply tempered the weight of the optional rating factors, without allowing for the pumping of mandatory factors. In other words, Mr. Downer's analysis sought to place the burden of the entire shift in a consumer's rate on territory without adjusting other rating factors to affect the rate. The Commissioner's regulations, however, do not condone such an approach. In fact, the Commissioner's regulations envision that insurers will do more than merely temper those factors, such as territory, which are weighted too heavily under Proposition 103. The Commissioner's regulations also seek to force insurers to pump, i.e. - give greater consideration to factors such as years licensed, annual mileage driven and driving safety record – factors that insurers have traditionally placed less emphasis on, when compared to the emphasis placed upon territory.

#### **1.7 Common Comments:**

- **The proposed regulations will produce rates which are not actuarially sound.**
- **The proposed regulations, by creating cross-subsidies, violate actuarial standards of practice.**
- **The proposed regulations are unfairly discriminatory or are not substantially related to the risk of loss because they are not actuarially sound.**

**Response:** As compared to the existing regulations, the Commissioner's proposed regulations represent the lawful interpretation of Proposition 103. Insurance Code section 1861.02 requires that every optional factor, such as territory, be given less weight than driving safety record, annual miles driven or years of driving experience. The American Academy of Actuaries' Statement of Principles for Risk Classification provides that actuarial standards must yield to social acceptability guidelines, including applicable law. (American Academy of Actuaries, Risk Classification Statement of Principles, p. 14, para. H.) Because optional factors must be given less weight than under the proposed

regulations in order to ensure that the mandatory factors are most important as section 1861.02 requires, the resulting rate cannot be considered actuarially unsound on this basis. Moreover, the Commissioner has observed substantial evidence to suggest that rates under the current regulatory system are often not tied to the risk of loss. Indeed, whether territory, gender, marital status or a multiple car discount are entitled to the significant weight they are given by many insurers under the existing regulations is a subject of considerable disagreement within the insurance ratemaking community.

#### **1.8 Common Comments:**

- **The proposed regulations violate *Spanish Speaking Citizens' Foundation v. Low*, because they allow for pumping and tempering.**
- **The proposed regulations violate *Spanish Speaking Citizens' Foundation v. Low*, because they create rates which are not based on the cost of providing insurance.**
- **The proposed regulations violate *Spanish Speaking Citizens' Foundation v. Low*, because rates which are not cost-based are arbitrary.**

**Response:** Although the Court in *Spanish Speaking Citizens* considered the standards of Proposition 103 and concluded that rates which deviated from cost-based pricing would violate Proposition 103's prohibition against arbitrary rates, the Court also conceded that "there may be no one single correct interpretation" of Proposition 103's competing requirements. (*Spanish Speaking Citizens' Foundation v. Low* 85 Cal.App.4<sup>th</sup> 1179, 1231.) The Court also acknowledged that the existing regulations do not ensure that rates will be determined primarily by driving safety record and mileage driven, as the ballot pamphlet to Proposition 103 intended. (*Spanish Speaking Citizens* 85 Cal.App.4<sup>th</sup> at 1237-38.) Recognizing the competing goals of Proposition 103, and the fact that rates are not determined primarily by driving safety record and mileage driven, the Court noted that an interpretation of Proposition 103 identical to the interpretation set forth in the Commissioner's proposed regulations, "may be a permissible interpretation of [section 1861.02]." (*Spanish Speaking Citizens* 85 Cal.App.4<sup>th</sup> at 1239.)

#### **1.9 Common Comments:**

- **The proposed regulations do not account for the likelihood of theft in urban areas versus rural areas**
- **The proposed regulations do not account for the likelihood of vandalism claims in urban areas versus rural areas.**

#### **Response:**

Claims for vehicle theft or vandalism generally fall under an insurance policy's comprehensive coverage. Claims under that coverage may have limited correlation to the mandatory rating factors. To the extent that comprehensive coverage bears less of a relationship to the mandatory factors of driving safety record, mileage driven and years of driving experience, the Commissioner has revised the regulations to account for the unique concerns raised by comprehensive coverage. Title 10 California Code of Regulations section 2632.8(a) permits an insurer to combine comprehensive coverage



with collision coverage to enhance the proposed regulations' substantial relationship to the risk of loss. The regulatory change which will allow such combination will comply with Proposition 103's weight ordering requirements insofar as comprehensive coverage and collision coverage represent a policy "combination thereof" as described in section 660(a).

**Commentator:** Harry Adams on behalf of Assemblywoman Sally J. Lieber & 27 other member of the Cal. State Assembly

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The commentator represents a bipartisan group of members of the California State Assembly. The commentator is opposed to the proposed regulations because of the potential negative impact upon constituents in rural and suburban areas.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

**Commentator:** Henry Rosales

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Robert Bivens, on behalf of the 77 branches of the NAACP in California.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The commentator is concerned about insurance redlining and is concerned about rates which are unfair to ethnic minority and persons with low income. Rates appear to discriminate against people of color based on zip codes and where you live, instead of the driving record of the policyholder.

**Response to Comment:**

The proposed regulations will limit the extent to which insurers may use zip code as a rating factor. The regulations will also require insurers to base rates more on the driving record of the policyholder than on where the policyholder lives. Therefore, these comments appear to support the proposed regulations and no further response is necessary.

**Commentator:** John Rachford, of the Kings County Board of Supervisors

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

It is blatantly unfair for drivers in rural counties to have their rates increased 20-35%. Kings County is made up of 50% ethnic minorities. Farm laborers will be forced to pay a substantial amount more for insurance, despite their low wages. Car thefts and other claims under comprehensive coverage are much more likely to occur in an urban location, as opposed to a rural location. According to a study conducted by a firm hired by the Commissioner, rates will go down 10% for San Francisco and Los Angeles, but rates will increase 20-35% for rural counties such as Lake, Modoc, Siskiyou, Inyo and Imperial County. Rural counties are poorer than metropolitan areas, and rates should be reflective of the risk of loss for the particular region of the state being considered.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

See Response to Common Comment 1.9

**Commentator:** Gary Wyatt, on behalf of the Imperial County Board of Supervisors, the Regional Council of Rural Counties and the California State Association of Counties

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The California State Association of Counties and Regional Council of Rural Counties voted to oppose the proposed regulations because the regulations will disproportionately affect drivers in Imperial County and other drivers who live in rural and suburban areas of the state. A study conducted by the Department shows that the highest increase in any county will be a 35.3% increase in Mono County. People should pay lower rates when they live in areas of lower risk. Imperial County is the poorest county in California. It is unjust and unfair that those who can least afford it will have to pay more, while drivers in Beverly Hills or Santa Monica will receive a rate decrease. Location and zip code are important and should remain important in determining fair and accurate rates.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

**Commentator:** Linda Arcularius, on behalf of the Inyo County Board of Supervisors, the Regional Council of Rural Counties and the City of Bishop

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The proposed regulations are not fair because they will force rates to go up for drivers in areas of the state where there is less risk of getting into an accident and rates will go down for drivers in areas where there is greater risk for getting into an accident. Location and zip code should remain important in calculating fair insurance rates. Inyo County is much less congested and less populated than Los Angeles County and the chances of getting into an accident are much less. Drivers in Inyo should not have to pay 28% more than drivers in other parts of the state. The proposed regulations, therefore, should be withdrawn.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

**Commentator:** Michael Lyon, on behalf of the San Francisco Gray Panthers

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

While seniors tend to rely more upon public transportation than private cars, seniors do generally need cars for transportation. Seniors are on fixed incomes and are less able to pay for high insurance rates. Seniors also have more experience driving and tend to drive fewer miles and therefore their rates should be lowered. Insurance companies are making substantial amounts of money and people who are poor or old should not have to pay more. The commentator is opposed to redlining and charging rates in a discriminatory manner. A person's driving record should be the most important characteristic for rating drivers. If people in rural areas have a lower risk of accidents, then rural drivers rates should go down due to their safer driving record.

**Response to Comment:**

See Response to Common Comment 1.5

**Additional Response:**

The proposed regulations will limit the extent to which insurers may use zip code as a rating factor. The regulations will also require insurers to base rates more on the driving record of the policyholder rather than on where the policyholder lives. Therefore, these comments are in support of the proposed regulations and no further response is necessary.

**Commentator:** Doug LaMalfa, California State Assemblymember

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The existing regulations are about as fair as possible. The proposed regulations, by comparison, will result in a rate increase for 52 out of 58 counties. This is contrary to the fact that many geographic areas of the state represent a low risk and experience less traffic, fewer incidents of theft and vandalism. Traffic congestion is much more common in the urban areas than it is in the rural areas. It will be extremely unfair to rural areas of the state if rates are based primarily on factors such as miles driven, because rural drivers tend to drive farther than urban drivers, due to the wide open spaces in the rural countryside. The proposed regulations will hit some of the poorest people in the state the hardest. Depending upon the manner in which an insurer were to comply with the proposed regulations, policyholders will see different ranges of premium changes. For example, in Modoc County, policyholders could see rate changes from 9 to 23 percent. In the city of McArthur, rate changes could range from 10 to 28 percent. Other examples are provided as well. Meanwhile, rates for persons who have higher incomes will receive rate decreases. The commentator also invites the Commissioner to hold a field hearing in Red Bluff to hear the public's concerns.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

See Response to Common Comment 1.9

**Additional Response:**

The Commissioner appreciates the invitation to hold a hearing in Red Bluff, but respectfully declines the invitation. The Commissioner held numerous meetings throughout the state in 2003 and 2004 and obtained a substantial amount of public input from Californians living in both rural and urban settings. (See RH03029826 Rulemaking File Public Comments, Vol. 8, Tabs 1&2, Exhibits 1-7.) Based in part upon the public comments received during those meetings, the Commissioner developed the proposed regulations.

**Commentator:** Robert Bernstein

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

It seems odd that the Commissioner would seek to make massive changes to the auto rating factors regulations, which could be thrown out by the Commissioner's successor.

The current method of determining the weight of a particular rating factor is the Single Omit method which was developed by the commentator. The Single Omit method was designed to work with the existing regulations but will not work properly with the proposed regulations. The Commissioner should use a new method to measure weight that works with the proposed regulations.

**Response to Comment:**

The Commissioner disagrees with the commentator's suggestion. The current method for measuring a rating factor's weight will work well with the proposed regulations, and is not adversely affected by the changes made to the existing regulations. The Commissioner intends to continue use of a method for measuring a rating factor's weight that is consistent with the Department's prior system of measurement.

**Summary of Comment:** No magic formula will reduce premiums for all drivers. The proposed regulations will simply redistribute costs primarily among good drivers and will not reduce good drivers' premiums. The proposed regulations will result in more insureds receiving increases in their premium, will force consumers in low cost areas to pay more while permitting drivers in high cost areas to pay less and will not benefit consumers. Eliminating territory as a rating factor is not good economics and not actuarially sound. Some insurers will be priced out of the market because surcharges based on driving record without considering territory may be substantial. The proposed regulations will be bad for competition and bad for Californians.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.7

**Summary of Comment:**

One way for insurers to avoid being priced out of the market will be to use a standard data set of insureds that is published by the Department, called the "alternative weighting file." This data set, however, does not appear to be used much and appears to be out of date.

**Response to Comment:**

This comment is not directed at the proposed regulations and therefore likely requires no response. To the extent that the commentator suggests that the alternative weighting file is an available alternative data set which will assist insurers in complying with the proposed regulations, the data set remains available for insurers to use to set automobile rates.

**Summary of Comment:**

The proposed regulations will result in increased overall insurance costs for all Californians because the proposed regulations will preclude an insurer from using rating

characteristics such as territory to their full advantage. Consequently, more individuals with higher risk characteristics will purchase more coverage, and insurers will be forced to increase costs overall to pay for the higher risk policyholders. The commentator's argument is supported by Actuarial Standard of Practice No. 12.

**Response to Comment:**

The proposed regulations will, indeed, reflect a revenue neutral change for a given insurer. The selection of rating factors, ordering of rating factor weights and decisions regarding the relativities to be used within each rating factor do not, by themselves, alter the total amount of premium that an insurer will collect. In fact, the application of rating factors to policyholders is simply the method by which the company decides how much of the total premium collected by the insurer should be allocated to each policyholder. This is the principle of revenue neutrality. To the extent that the commentator believes that policyholders who receive reductions in their rate will seek to purchase greater coverage or vice-versa, the commentator does not rely upon any data for this statement. It appears that the commentator's suggestion is merely speculative at this point. While the Commissioner will continue to carefully observe the automobile insurance marketplace after the proposed changes take effect, he does not expect the proposed regulations to undermine the financial strength of the automobile insurance market.

For the reasons stated in Response to Common Comment 1.1, the Commissioner is confident that the proposed regulations will still be substantially related to the risk of loss, and therefore will not result in improper risk distribution for insurers. Moreover, to the extent that the commentator is arguing that the proposed regulations are contrary to actuarial principles, the Commissioner disagrees for the reasons set forth in Response to Common Comment 1.7.

**Summary of Comment:**

The Commissioner's report, entitled "Auto Insurance in California: Differentials in Industry wide Pure Premiums and Company Territory Relativities between Adjacent ZIP Codes" supports the existing regulations. The report also demonstrates that there is little truth to the suggestion that policyholders pay dramatically different rates on opposite sides of a zip code boundary. The Commissioner should respond to these comments by providing support for his claim that insureds with identical rating characteristics that live on opposite sides of a zip code boundary pay dramatically different rates.

**Response to Comment:**

The Commissioner disagrees with the commentator's characterization of the Department's study. In fact, the Department's study concluded that the differentials in territory relativities between adjacent zip code pairs for some companies do not closely follow the patterns of the industry wide pure premium data. (See RH03029826 Rulemaking File Comments, Volume 7, Tab 5, page 39.) To the extent that the commentator has requested support for the conclusion that policyholders with similar characteristics pay substantially different premiums on opposite sides of a zip code boundary, please see Response to Common Comment 1.3 and RH03029826 Rulemaking File Comments, Volume 7, Tab 5, pages 26-27.

**Summary of Comment:**

The proposed regulations will force many in lower-cost areas of the state to pay more for insurance, despite the fact that they earn less than persons in urban areas. The proposed regulations are not mandated by Proposition 103. The differences in loss costs between urban and rural regions of the state are due to factors such as traffic density, bad traffic controls, dangerous weather, high medical costs, litigation costs and other reasons. Actual costs do vary by ZIP code and the proposed regulations are bad policy for California because they do not account for territory's correlation to cost based pricing.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.8

**Commentator:** Dr. Arthur Keller on behalf of the Adobe Meadow Neighborhood Association

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Mike Smith on behalf of the City Council for the City of Dixon

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The City Council of Dixon is opposed to the proposed regulations. The Commissioner should abandon his rulemaking proceeding and look instead at the causes of higher insurance risk. For example, auto thefts in certain regions of the state are allowed to run rampant. These thefts result in increased rates for customers. The Commissioner should approach communities on the local level and work towards getting cities to fix the problems that cause higher rates, rather than simply surcharge drivers for the effect of poor driving safety. Rather than pump money into higher insurance premiums, money should be spent paying for better roadways and safer streets.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

**Additional Response:**

The Commissioner's jurisdiction extends only to insurance. While the commentator appears to have some useful recommendations for ways to reduce traffic accidents, those recommendations are beyond the scope of the Commissioner's regulatory authority.

**Commentator:** Ron Taddei

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The commentator is a farmer who grows 20 acres of wine grapes in the Napa Valley. The commentator is concerned about the proposed regulations because the highest rate increases will be for drivers in the rural areas such as Napa County. It should not matter whether a driver lives in the city or country. Everyone should pay for rates that are based on their own risks of having an accident or filing a claim. The proposed regulations will raise rates for most Californians and because rural drivers drive more miles than other urban drivers, the regulations will hit rural drivers hard. More than 90 percent of California family farms qualify as small businesses. Many of the farm vehicles are used only within Napa County, and the proposed regulations will adversely impact farm workers in rural areas. Some towns could see rates jump by 40 percent or even more on average. Napa County will see an average rate increase as high as 12 percent.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

**Commentator:** Forescee Hogan-Rowles

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Joe Ridout, on behalf of Consumer Action

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**



Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Ruben Adrica, Mayor of East Palo Alto

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Ernest Ayala

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Tarecq Amer, on behalf of the National Economic Development and Law Center

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The current insurance rates negatively impact low-income communities and communities of color in particular. Families who live paycheck to paycheck are forced to choose between automobile insurance and other necessities. The current practices exacerbate the growing divide between the wealthy and the poor. The Commissioner should change the state of the law so that rates are equitable.

**Response to Comment:**

The purpose of the proposed changes to the regulations is to implement the weight ordering requirement of Proposition 103. Thus, under the proposed regulations, an individual's driving safety record, annual mileage driven and years of driving experience must be the three most important factors which make up a policyholder's automobile insurance rate. While a driver's location may still be given substantial importance, that factor cannot weigh more than the factors described above. The proposed regulations will affect low-income communities and communities of color differently. Where a person lives will have less influence on an insurance rate than how a person drives. This

system of rating is the system that the majority of California decided was most equitable, when the voters enacted Proposition 103 in 1988.

**Commentator:** Nancy McDonough, on behalf of the California Farm Bureau Federation

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The California Farm Bureau is opposed to the proposed regulations because the proposed regulations unfairly discriminate against rural drivers by giving artificially high importance to driving records and artificially low weight to a driver's location. The proposed regulations also give too much influence to the number of miles driven. Rural drivers drive more miles than urban drivers, but where those miles are driven makes a difference. Drivers in rural areas have fewer accidents and insurance claims than urban drivers. The proposed regulations will adversely affect the cost of farm operations because most vehicles owned by farmers are insured under private passenger auto plans. The increase in costs for agricultural businesses could hinder the creation of new jobs and the continued employment of agricultural employees. The proposed regulations will result in rates which are excessive, inadequate and unfairly discriminatory.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

**Commentator:** Mark Savage, on behalf of Consumer's Union, the National Council of La Raza, the Southern Christian Leadership Conference of Greater L.A., the Spanish Speaking Citizens' Foundation, the Foundation for Taxpayer and Consumer Rights, the cities of Oakland and Los Angeles and the County of San Francisco.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Hilary Rowen, on behalf of the California Farm Bureau

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The Mercer data call commissioned by the Department of Insurance demonstrates an estimate of the impact of the proposed regulations. Instruction set 1 substantially inflates or pumps up the effect of the rating factor of annual mileage driven. Because the results

are averaged, instruction set 1 tends to understate the impact on low-mileage drivers and tends to overstate the impact on high-mileage drivers. High mileage drivers are disproportionately found in rural areas.

Handout pages 1 through 3 show, among other things, that the proposed regulations will force much larger rate increases upon 52 counties in order to create smaller rate decreases for 6 counties. Page 4 of the handout uses the Mercer data to demonstrate that the average rate increases for regions with a low average household median income are greater than the average rate increase for homes with above-average household median incomes. Rural Californians and farmers are not wealthy, yet the transfer of rate charges will fall disproportionately upon poor income drivers while wealthier drivers will receive the subsidized rates.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

**Additional Response:**

The proposed regulations implement Proposition 103's requirement that rates should be based primarily upon how you drive rather than where you live. Thus, to the extent that a person's rates change adversely due to the proposed regulations, these adverse changes are a direct result of the fact that the existing regulations did not fulfill the voters' requirement that driving safety record and annual mileage must be the most important factors for auto rates. The proposed regulations, by comparison, do fulfill this requirement, while still preserving the other goals of Proposition 103. The premium shifting resulting from the proposed regulations is a necessary consequence in order to correct a regulatory system that has not been faithful to the voters' stated desire that driving safety record and annual miles driven should be the most important factors affecting an insured's rate.

**Commentator:** Stephen Young, on behalf of the Insurance Brokers and Agencies

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The commentator is concerned about the proposed regulations because insurance agents and brokers will be forced to explain why individual policyholders rates are shifting under the proposed regulations. The proposed regulations do not appear to be fair or legal. The legality and fairness of the proposed regulations will depend upon whether the regulations produce arbitrary or unfairly discriminatory rates. The Department's data call suggests that rates under the proposed regulations will be arbitrary. While there is a conflict within Proposition 103 that says you must give more weight to certain factors, irrespective of whether those factors are the most cost based factors, the ultimate goal of

Proposition 103 is to produce fair insurance rates. Fairness appears to be in the eye of the beholder.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

**Additional Response:**

Proposition 103 does, indeed, require insurance rates to be fair. Rather than characterize fairness as a concept merely subject to "the eye of the beholder," however, the Commissioner recognizes that the phrase had a specific meaning within Proposition 103. The Commissioner believes that the voters' concept of fairness is reflected in the requirement that driving safety record, annual miles driven and years of driving experience must be the most important factors for an auto rate. This was considered fair by the voters because it ensured that rates would be based on how you drive, rather than where you live. For this reason, among others, the Commissioner believes that the proposed regulations properly preserve the concept of fairness that the voters established in Proposition 103.

**Commentator:** Bob Downer, on behalf of American Insurance Association, the Association of California Insurance Companies and the Personal Insurance Federation.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

A critical element of risk classification pricing is making sure that risks are transferred in a manner that ensures that the risk factors are predictive of an individual's risk of loss. Additionally, automobile insurance must be priced before the service is delivered. Thus, it becomes very important for an insurer to accurately price and classify risks in order to be successful. If you move away from the predictive risk element for specific rating factors, you consequently move away from sound pricing. The commentator opposes the proposed regulations because the regulations move insurers away from the ability to preserve the predictive nature of a risk and properly price that risk.

The commentator also opposes the regulations because the proposed regulations will also result in huge premium disruption for drivers and families. The existing regulations work well because the list of rating factors available for use is a pretty good list. Moreover, the sequential analysis process under the existing regulations ensures that the predictive nature of the preceding factors is fully considered before an insurer can consider the predictive nature of territory. The driver's location is very important, even though it is the last item in the sequential analysis, because a driver's location predicts factors such as traffic density, theft rates, vandalism, litigiousness, quality of law enforcement, quality of roads, fraud and weather.

Instruction set 3 from the Mercer data call demonstrates that 82 percent of California communities will see their rates go up, while 60 percent of drivers will get a rate increase. Two million drivers will get a rate increase or decrease of 25 percent under the proposed regulations according to the Mercer data, reflecting a lot of premium disruption. Thus, the proposed regulations are moving away from sound risk classification and fair pricing for the consumer and the marketplace.

**Response to Comment:**

See Response to Common Comment 1.1  
See Response to Common Comment 1.2  
See Response to Common Comment 1.3  
See Response to Common Comment 1.4  
See Response to Common Comment 1.6  
See Response to Common Comment 1.7  
See Response to Common Comment 1.9

**Additional Response:**

Rather than move rates away from sound pricing, the proposed regulations will force insurers to engage in more effective risk classification for rating factors such as driving safety record and annual mileage driven. Under the existing regulations, many insurers do not effectively classify risks by driving safety record or mileage, because they can fall back on a driver's location as the single most important rating factor. It is clear that insurers do not devote sufficient energy towards risk classification for the mandatory factors under the existing regulations. The proposed regulations, in addition to implementing the weight ordering requirements of Proposition 103, will result in the added benefit of forcing insurers to do a better job of classifying risks by giving due consideration to important rating criteria such as driver safety record and annual mileage driven.

**Commentator:** Milo Pearson, on behalf of the Pacific Association of Domestic Insurance Companies and the National Association of Mutual Insurance Companies.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

The commentator opposes the proposed regulations. While the commentator's experience as a former regulator has helped the commentator to appreciate the fact that Proposition 103 is not perfect. It is fundamentally unfair for rural and suburban drivers to pay higher premiums so that drivers in densely populated areas can pay less.

**Response to Comment:**

See Response to Common Comment 1.1  
See Response to Common Comment 1.2  
See Response to Common Comment 1.3

**Commentator:** Ken Nigohosian, on behalf of the Alliance of Insurance Agents and Brokers & the Western Insurance Agents Alliance.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Agents and brokers are the eyes, ears and voice of the consumers. Policyholders will call agents and brokers when they have questions about why their rates have increased.

While agents and brokers can typically answer questions about why a particular insured's rate has gone up, it will be difficult for agents and brokers to explain why rates have gone up under the proposed regulations. Because the proposed regulations will have an adverse impact upon 52 out of 58 counties, the commentator opposes the proposed regulations.

**Response to Comment:**

See Response to Common Comment 1.1

See Response to Common Comment 1.2

See Response to Common Comment 1.3

See Response to Common Comment 1.4

See Response to Common Comment 1.6

**Additional Response:**

Agents and brokers will be able to respond to consumer questions about their changes in rates by informing the consumer that the proposed regulations implement Proposition 103's requirement that rates should be based primarily upon how you drive rather than where you live. Thus, to the extent that a person's rates change adversely due to the proposed regulations, agents and brokers can notify the consumer that their rate under the existing regulations did not fulfill the voters' requirement that driving safety record and annual mileage must be the most important factors for auto rates. The proposed regulations, by comparison, do fulfill this requirement, while still preserving the other goals of Proposition 103. The premium shifting resulting from the proposed regulations is a necessary consequence in order to correct a regulatory system that has not been faithful to the voters' stated desire that driving safety record and annual miles driven should be the most important factors affecting an insured's rate.

**Commentator:** Birny Birnbaum, on behalf of the Foundation for Taxpayer and Consumer Rights

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.

**Commentator:** Kent Keller, on behalf of American Insurance Association, the Association of California Insurance Companies and the Personal Insurance Federation of California.

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:** The commentator disagrees with a statement in the Initial Statement of Reasons, which reads: “The Commissioner has determined that the current regulations are not consistent with the stated purposes of Proposition 103 and section 1861.02(a) and therefore must be replaced.” *Spanish Speaking Citizens’ Foundation v. Low* (2000) 85 Cal.App.4<sup>th</sup> 1179, 1238 concluded that the existing regulations constitute a “lawful choice among imperfect options.” The Court also stated that the existing regulations implemented most of Proposition 103’s conflicting demands, and were particularly faithful to the demand that rates must not be arbitrary.

**Response to Comment:**

See response to Common Comment 1.8.

**Additional Response:**

The Commissioner is cognizant of the Court of Appeal decision in *Spanish Speaking Citizens’ Foundation v. Low*, which held that the existing regulations lawfully implement the competing considerations of Proposition 103 and Insurance Code section 1861.02(a). While the Court in *Spanish Speaking* ultimately concluded that the existing regulations were a lawful choice among imperfect options, the Commissioner believes that the existing regulations are unlawful.

While the Commissioner disagrees with the Court's interpretation of Insurance Code section 1861.02 and Proposition 103 the Commissioner recognizes that the *Spanish Speaking* decision represents the current state of the law, and his response takes into account the Court's interpretation in *Spanish Speaking*.

**Summary of Comment**

Proposition 103, as interpreted by the Court in *Spanish Speaking Citizens*, does not require that the weights of the individual optional factors must weigh less than any of the mandatory factors. Additionally, the logic of the *Spanish Speaking Citizens* case would dictate that the proposed regulations are unlawful because the proposed regulations will result in arbitrary rates. The rates are arbitrary because the proposed regulations will deflate (i.e.-temper) the optional territory rating factors, despite the fact that the *Spanish Speaking Citizens* case concluded that territory was a more important determinant of the risk of loss than any other factor. The case also established that neither inflating (i.e.-pumping) nor deflating (i.e.-tempering) a rating factor are a preferred method of adjusting factor weights because the act of pumping or tempering does not coincide with the rating factor’s risk of loss.

**Response to Comment:**

See response to Common Comment 1.8.

**Additional Response:**

To the extent that this comment suggests that pumping or tempering results in an arbitrary rate and therefore the practice is not permitted under Proposition 103 for purposes of complying with the weight ordering mandate of section 1861.02(a), this comment is simply incorrect. As is explained in Response to Common Comment 1.1, the existing regulations also permit and sometimes require pumping and tempering of rating factors. Indeed, the commentator authored a similar comment for another insurer which admits as much, when he describes the current regulations as permitting the optional and mandatory rating factors to "realize their full weight with no artificial adjustment to the risk of loss, *unless the average weight of the optional factors were to exceed the weight of the third mandatory factor.*" (See comments to RH03029826, Vol. 6, Tab. 5, p. 4, lines 11-16 [emphasis added].) The commentator conveniently fails to explain what happens when the average weight *does* exceed the third mandatory factor. In fact, as explained above, the existing regulations permit and sometimes require insurers to engage in the act of pumping and tempering. The Commissioner has observed instances under the existing regulations where insurers, for example, have pumped years of driving experience because the average weight of the optional factors outweighs years of driving experience. This practice is permitted by the express language of the existing regulations. While the commentator's argument would suggest that the existing regulations are invalid on the grounds that pumping and tempering are not permitted by Proposition 103 and section 1861.02(a), the existing regulations demonstrate that this argument is false and grossly overstates the Court's decision in *Spanish Speaking Citizens*.

**Commentator:** Pam Pressley, on behalf of the Foundation for Taxpayer and Consumer Rights

**Date of Comment:** Presented at Feb. 24 Rulemaking Hearing

**Type of Comment:** Oral

**Summary of Comment:**

Comment is in support of proposed regulations.

**Response to Comment:**

No response necessary.